

REMARKS

Claims 22-27, 49 and 50 are pending in the application. Claim 22 is amended in this Amendment. Support for the Amendment is found at Paragraph [0050] and in Figure 5c of US 2004/0152042. Applicants respectfully submit that no new matter is added via the amendment.

Claims 22-27, 49 and 50 are rejected under 35 U.S.C. 103(a) over Winkler (US 6,047,864), in view of Riegl (US 5,947,728) and Brizzolara (US 5,236,355). Applicants respectfully traverse.

Initially, Applicants respectfully submit that claims 22-27, 49 and 50, as existing prior to this Amendment, were patentable under 35 U.S.C. 103(a) over Winkler (US 6,047,864), in view of Riegl (US 5,947,728) and Brizzolara (US 5,236,355). Applicants respectfully submit that, notwithstanding the positions set forth in the Office Action mailed on June 23, 2009, Winkler, in combination with Riegl and Brizzolara, fail to suggest or provide the required motivation to one skilled in the art to provide a device comprising a barrel having a tube portion that includes a tip configured for being deformed to at least one cross-sectional geometry different from its initial cross-sectional geometry, and wherein the body portion of the barrel includes flexible flanges for forming a temporary locking engagement with at least a portion of an external force applying member, and wherein dry particles are contained within the tip. However, in order to expedite prosecution on the merits, Applicants have amended claim 22, and claims depending thereon, to further clarify that which Applicants claim as their invention.

Claim 22 has been amended to recite that the tip tapers distally such that the inner wall thickness of the tip is reduced by the tapering, thereby permitting the tip to be deformed to at least one cross-sectional geometry different from its initial cross-sectional geometry. Reduction of the inner wall thickness of the tip as it tapers distally allows for ready manipulation of the tip by the dental professional prior to use and/or upon contact with a tooth or other tissue (Figure 5c and Paragraph [0050] of US 20904/0152042). In this way, the cross-sectional geometry of the tip and the opening of the tip may be deformed from, e.g. a circular shape to an oval shape, in order to facilitate delivery of the dry particles contained within the tip to the periodontal pocket.

Winkler discloses an actuating device for dispensing a paste-like material, e.g. mercury-containing amalgam, from a capsule or cartridge attached to an actuating device. Winkler discusses other conventional devices for dispensing pastes and the respective shortcomings of such devices in the background of the invention. The expressly stated object of Winkler is to

provide an actuating device “which allows a safe actuation at high actuating forces with easy removal of the capsule and/or cartridge” (Col. 1, ll 59-62).

The housing of the Winkler actuating device includes a plurality, preferably 2 to 4, of securing tongues releasably securing the cartridge containing the paste-like material at the housing, which securing tongues further include a projecting collar having an abutment for supporting the cartridge in a dispensing direction (FIG 2, Col. 5, ll 16-32; Col. 2, ll 9-16). Winkler indicates that the device allows for a safe securing of the cartridge or capsule to the actuator due to the unitary construction of the shaft and the projection provided as an abutment for securing the capsule or cartridge. It further indicates that the invention “surprisingly allows for the possibility to remove the completely empty capsule or cartridge from the actuating device by employing the handle of the actuating device (Col. 3, 8-27). The cartridge can be removed by applying only a manual force via the handle (Col. 6, ll 62-65). Applicants respectfully submit that the express teaching of Winkler is to provide an actuating device that contains the mechanism for securing and supporting the cartridge or capsule within the actuating device itself, with the express objective of providing a safe securing of the cartridge to the actuating device, while at the same time providing quick and easy release of the cartridge from the actuator by the handle of the actuator.

Applicants respectfully submit that in order to render an invention obvious, there must be some teaching or suggestion in the prior art that would motivate one skilled in the art to modify Winkler as suggested in the Office Action. Further, Applicants respectfully submit that such a modification cannot run against the express teachings of Winkler or render the devices of Winkler inoperable for their intended purpose, i.e. safe and secure connection with easy release via the actuator handle.

The Office Action states that the reversal of such elements is generally considered obvious to one skilled in the art. Applicants respectfully disagree. While the Office Action apparently equates a reversal of coupling elements to reversing buttons and holes on a shirt, Applicants respectfully submit that one skilled in the art of devices for delivering medicaments to a periodontal pocket would readily realize that securely connecting two working components together in an operable relationship is more complex. Structure and purpose of the components, although not limiting, are among considerations that must be taken into account. It must not

merely be obvious to try, but obvious to do what it is that the Office Action maintains as an obvious derivation of the reference.

Neither does Riebl cure the deficiencies of Winkler. Riebl discloses a dental applicator for applying amalgam or other dental filling material. The applicator includes a handle and plunger, apparently connected via a base. The base includes flanges for connecting the base to the handle. However, the base is not a cartridge or capsule for containing and delivering material and apparently serves no function except for connecting the handle and plunger. Applicants respectfully submit that to modify Winkler first by replacing the securing tongue assembly that includes the collar with a flange assembly as taught in Riebl, and secondly by placing the flange assembly of Riebl on the cartridge of Winkler, as opposed to the actuator, would render Winkler inoperable for its intended stated purpose. Applicants respectfully submit that Winkler clearly teaches away from and in fact precludes such a modification as proposed by the Office Action.

Applicants respectfully submit that Winkler must provide the requisite teaching or suggestion that would motivate one skilled in the art to configure the tip such that it can be deformed to at least one cross-sectional geometry different from its initial cross-sectional geometry. Nowhere in Winkler is it taught or suggested that the tip of the cartridge may be or should be deformed. There is no discussion of material, structure or configuration of the tip that would suggest to one skilled in the art such deformation as claimed by Applicants, even prior to the Amendment. Furthermore, Applicants respectfully submit that Winkler is void of any teaching that the tip of Winkler should taper distally such that the inner wall thickness of the tip is reduced by the tapering, thereby permitting the tip to be deformed to at least one cross-sectional geometry different from its initial cross-sectional geometry.

With regards to Brizzolara, Applicants respectfully submit that paste-like amalgam materials are not the same as dry particles and thus have different properties. The devices of Winkler and Riebl are used for different purposes than Brizzolara. Applicants respectfully submit that the differing materials and uses require different considerations with respect to device structure, design and forces required to eject the respective materials from such devices. As such, Applicants respectfully submit that it would not be obvious to one skilled in the art to replace the paste-like amalgam materials of Winkler and Riebl with the dry particles of Brizzolara.

Based on all of the foregoing, Applicants respectfully submit that claims 22--27, 49 and 50 are patentable under 35 U.S.C. 103(a) over Winkler (US 6,047,864), in view of Riegl (US 5,947,728) and Brizzolara (US 5,236,355) and request that the rejection thereof be withdrawn.

Claims 22-25, 49 and 50 are rejected under 35 U.S.C. 103(a) over Brizzolara (US 5,236,355) in view of Egolf (US 4,909,788). Applicants respectfully traverse.

Brizzolara discloses an apparatus for the treatment of periodontal disease which comprises a container that includes a barrel, a tip and a “finger-engaging” flange of the type commonly seen in syringes. A plunger rod is used to dispense the medicament (Figs. 6a-6d, Col. 11, ll 15-32). Applicants respectfully submit that, absent a teaching or suggestion found in the prior art, to “deem” that the tip is capable of being deformed with a pair of pliers does not meet the requirements for establishing a prima facie case of obviousness. Contrary to the assertion of the Office Action, Applicants respectfully submit that Brizzolara is void of any teaching that the tip of Brizzolara may taper distally such that the inner wall thickness of the tip is reduced by the tapering, thereby permitting the tip to be deformed to at least one cross-sectional geometry different from its initial cross-sectional geometry. Applicants agree with the Office Action in that Brizzolara fails to teach flexible flanges for forming a locking engagement with a portion of an external force applying member and note that the flanges in Brizzolara are solely for grasping or holding, and have no function with respect to temporarily locking the container to an external force applying member.

The Office Action indicates that Egolf teaches that is desirable to attach a finger engaging flange 44 to the end of the barrel of body portion 12 with flexible flanges 36 so that the orientation of the finger flanges can be oriented by the user to adjust for the orientation of the syringe tip. Applicants note that engaging flange 44 is not a part of body 12 and, as accurately stated in the Office Action, serves to adjust orientation of the syringe, not for forming a temporary locking engagement with at least a portion of an external force applying member. In fact, Applicants respectfully submit that neither Brizzolara nor Egolf provide any suggestion or teaching that the container or barrels should or could comprise flexible flanges for providing a temporary locking engagement with at least a portion of an external force applying member. In fact, the plungers in both references are free from, i.e. have no interlocking connection with, the container or barrel of the references.

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Based on all of the foregoing, Applicants respectfully submit that claims 22--27, 49 and 50 are patentable under 35 U.S.C. 103(a) over Brizzolara in view of Egolf and request that the rejection thereof be withdrawn.

Based on the foregoing Applicants respectfully submit that claims 22-27, 49 and 50 are patentable and request a Notice of Allowance with respect thereto.

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